

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

PBM PRODUCTS, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
MEAD JOHNSON NUTRITION COMPANY,	)	Civil Action No. 3:09cv269 (JRS)
	)	
Defendant,	)	
	)	
and MEAD JOHNSON & COMPANY,	)	
	)	
Defendant and	)	
Counterclaim plaintiff)	)	
	)	
v.	)	
	)	
PBM PRODUCTS, LLC and PAUL MANNING,	)	
	)	
Counterclaim	)	
defendants.	)	
	)	
	)	

**MOTION TO EXCLUDE THE EXPERT REPORT AND TESTIMONY OF DR. DHAR**

Counterclaim defendant PBM Products, LLC respectfully submits this motion, pursuant to Rule 702 of the Federal Rules of Evidence and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), to exclude the testimony of Dr. Ravi Dhar, who has been offered by counterclaim plaintiff Mead Johnson & Company as an expert on consumer surveys.

Mead Johnson's counterclaims allege that the product packaging for PBM's formulas contain false statements in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B). Mead Johnson seeks to rely on two surveys conducted by Dr. Dhar to show that PBM's product packaging contains implied false claims. Both surveys are so fraught with

methodological and analytical flaws that they fail to meet the threshold for expert evidence, do not fit the issues of the case and, in any event, whatever probative value they might have is far outweighed by their potential to prejudice the finder of fact.

The arguments in support of PBM's Motion are more fully set forth in its Memorandum in Support, filed this day under seal with the Court.

Respectfully submitted,

September 23, 2009

/s/ Robert F. Redmond, Jr.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 23rd day of September, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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I further certify that I will mail a copy of the foregoing via first class mail to the following non e-filing users:

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